

Group V: Claim 53, drawn to a method for producing antitumor and antiviral medication with activated lymphocytes by heating with galenical extract; and

Group VI: Claim 54, drawn to a method of administration of an antitumor and antiviral medication.

Restriction is only proper if the claims of the restricted groups are either independent or patentably distinct. The burden of proof is on the Office to provide reasons and/or examples to support any conclusion with regard to patentable distinctness. MPEP §803.

Applicants respectfully traverse the requirement for restriction on the grounds that the Office has not provided adequate reasons and/or examples to support a conclusion of patentable distinctness between the identified groups.

The Office has characterized the relationship between Groups I and III-V as process of making and product made. Citing MPEP §806.05(f), the Office states that the product as claimed can be made by “another and materially different process of culturing with antibody, for example: abstract of JP 3-080076”. However, the Office has merely cited JP 3-080076 and alleged a conclusion. Further, the Office has failed to show that the proposed “process of culturing with antibody” is materially different from the claimed process. Accordingly, Applicants respectfully submit that the Office has failed to meet the burden necessary in order to sustain the Requirement for Restriction.

In regard to Groups I and ^{VI}~~IV~~, the Office has characterized the relationship between these groups as product and process of use. Citing MPEP §806.05(h), the Office states that the process as claimed can be practiced with “another materially different product derived from the genetically engineered expressions system including microbial cells, for example: US 5,891,653 (abstract).” Applicants note that the Office has merely cited US 5,891,653 and

stated an unsupported conclusion. The Office has failed to show that the "product derived from the genetically engineered expressions system including microbial cells" is materially different from the claimed product. Accordingly, Applicants respectfully submit that the Office has failed to meet the burden necessary in order to sustain the Requirement for Restriction.

Further, Applicants respectfully traverse the Requirement for Restriction on the grounds that the Office has not shown that a burden exist in searching all of the claims. Applicants respectfully point out Groups I-II and VI are in classified in class 424 and Groups III-V are in classified in class 435, and that thousands of U.S. patents have issued in which many more than two classes are searched, and the Office cannot reasonably assert that a burden exists in searching only two classes.

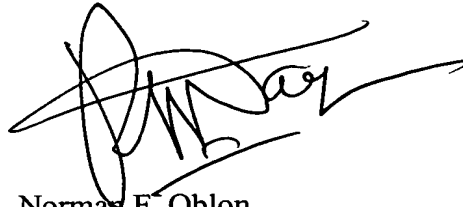
Finally, Applicants note that MPEP §821.04 states, "if applicant elects claims directed to the product, and a product claim is subsequently found allowable, withdrawn process claims which depend from or otherwise include all the limitations of the allowable product claim will be rejoined." Applicants respectfully submit that should the elected group be found allowable, the non-elected claims should be rejoined.

Accordingly, and for the reasons presented above, Applicants submit that the Office has failed to meet the burden necessary in order to sustain the Requirement for Restriction. Withdrawal of the Requirement for Restriction is respectfully requested.

Applicants respectfully submit that the above-identified application is now in condition for examination on the merits, and early notice thereof is earnestly solicited.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



Norman F. Oblon
Attorney of Record
Registration No.: 24,618

Rohitha M. Jayasuriya
Registration No. 50,385



22850

PHONE: (703) 413-3000
FAX: (703) 413-2220
NFO:RMJ